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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2407/2014*, **

Communication submitted by:	Rasul Guliyev (represented by counsel, Ismail Shahtakhtinski)
Alleged victim:	The author
State party:	Azerbaijan
Date of communication:	21 January 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 June 2014 (not issued in document form)
Date of adoption of decision:	23 July 2018
Subject matters:	Politically motivated and arbitrary arrest, detention and criminal charges against an opposition politician; restriction of the right to be elected
Procedural issues:	Substantiation of claims; exhaustion of domestic remedies; other international mechanism; accessory character of article 2 of the International Covenant on Civil and Political Rights; inadmissibility *ratione temporis*; inadmissibility *ratione materiae*
Substantive issues:	Voting and election; arbitrary arrest and detention; criminal charges; freedom of movement; freedom of expression; freedom of assembly; discrimination
Articles of the Covenant:	2, 9, 14, 19, 21, 25 and 26
Articles of the Optional Protocol:	1, 2, 3 and 5 (2) (a) and (b)

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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1. The author of the communication is Rasul Guliyev, a citizen of Azerbaijan born in 1947, residing in the United States of America. He claims that the State party has violated his rights under articles 2, 9, 14, 19, 21, 25 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 27 February 2002. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is a founder of the Open Society Party, an Azerbaijani opposition party, and the former leader and founder of the Azerbaijan Democratic Party. He worked in high managerial posts in the oil sector from 1990 to 1993 and was the Speaker of Parliament from 1993 to 1996. On 11 September 1996 he resigned, allegedly to protest against the policy of the ruling party, and shortly afterwards fled to the United States, where he was granted refugee status on 27 July 1998 and where he has been residing ever since.

2.2 The author alleges that due to his vocal criticism of the ruling party's policies, a criminal investigation was opened against him in 1996. On 7 April 1998, he was charged with misappropriation of public funds, abuse of power and fraud at his posts in the oil sector and in government. On the same date, the investigative department of the Ministry of the Interior issued a search warrant against the author. On 10 October 2000, Sabail District Court, in Baku, granted the prosecutor's request for the detention of the author. On 17 October 2000, the Court of Appeal upheld that decision.

2.3 On 2 July 2002, the author requested Sabail District Court to substitute house arrest for the detention on remand, under conditions whereby he would return to Azerbaijan and stand trial. On 5 July 2002, that Court rejected the author's petition based on the seriousness of the alleged crimes, on the fact that he had fled the investigation, and on a reasonable belief that he would influence other parties in order to hinder the criminal proceedings. On 23 July 2002, the Court of Appeal dismissed the appeal that the author had lodged with it.

2.4 On 22 June 2003, the Azerbaijan Democratic Party nominated the author for the presidential elections that were to be held on 15 October 2003. On 2 July 2003, the Central Election Commission refused the registration on the grounds that the requirements set forth in section 100 of the Constitution and in section 54 (8) of the Election Code had not been met. The Azerbaijan Democratic Party challenged that refusal before the Court of Appeal. On 7 July 2003, the Court of Appeal rejected the appeal on two grounds: (a) the registration documents submitted to the Central Election Commission had not been properly certified and legalized, as required under the Election Code; and (b) the Azerbaijan Democratic Party had failed to submit evidence that the author did not have any obligations or debts in the foreign State in which he had resided for the last seven years. On 14 July 2003, the Supreme Court upheld the Court of Appeal's decision. The Azerbaijan Democratic Party appealed to the Constitutional Court. On 1 August 2003, the Constitutional Court rejected the appeal and decided that the provisions of section 100 of the Constitution regarding obligations to another State referred to commitments arising from a citizen's ties with a foreign country such as tax, registration, a requirement not to leave the country for a long period of time, or any other tie that made the person dependent on another State.

2.5 The author filed a complaint with the European Court of Human Rights[1] concerning the detention order dated 10 October 2000 and the refusal to replace it with house arrest, and concerning the refusal of the Central Election Commission to register him for the presidential elections. On 27 May 2004, the Court declared his application inadmissible.

2.6 On 27 August 2005, the author registered as a candidate for the parliamentary elections to be held on 6 November 2005. On the same day, the Prosecutor General issued a decision assigning the execution of the 2000 detention order to the Ministry of the Interior. It was noted in the decision that the author would not benefit from the immunity granted to the candidates in the elections, which only applied to actions committed during the election process, and not to previous offences as was his case. On 30 and 31 August 2005, the author challenged the Prosecutor General's decision, before Sabail District Court, which

[1] Application No. 35584/02.

rejected the claim on 8 September 2005. The Court of Appeal and the Constitutional Court dismissed the author's appeals on 19 September 2005 and 12 October 2005, respectively.

2.7 In October 2005, two members of the Azerbaijan National Academy of Sciences requested Sabail District Court to substitute bail for the author's detention on remand, and expressed willingness to stand surety for him. On 14 October 2005, Sabail District Court rejected the request, having found that the applicants were not entitled under domestic law to bring such proceedings before courts. On 19 October 2005, the Court of Appeal rejected their appeal.

2.8 On 5 August 2005, the author's representative, acting on a power of attorney, requested the passport registration department of the Yasamal district police department to issue the author with a national identification card. On 10 August 2005, the passport registration department responded that the author had to submit the request in person. The author's appeals in that connection were rejected on 5 October 2005 by Yasamal District Court, on 21 December 2005 by the Court of Appeal and on 13 April 2006 by the Supreme Court.

2.9 On 8 August 2005, the author, through his representative, requested the Ministry of Foreign Affairs to change his diplomatic passport for a new-format passport. The Ministry did not respond. The author submitted a complaint to Yasamal District Court, which was rejected on 5 October 2005. The Court established that the Ministry had answered the author's request by letter No. 4/15-1617/15 dated 21 August 2005 and noted that domestic law required that requests for passports be submitted by the applicant in person. On 29 November 2005, the Court of Appeal rejected the author's appeal. On 31 March 2006, the Supreme Court rejected the author's cassation appeal.

2.10 Despite the alleged obstacles mentioned above, the author stood in the parliamentary elections and received 4,552 votes, compared to the 4,375 votes obtained by his closest rival. However, in a decision dated 7 November 2005, the district election commission — without indicating valid reasons — invalidated the results in 5 out of the 32 polling stations where the author had obtained more votes, resulting in him losing the election. Despite numerous complaints from interested parties, the Central Election Commission did not reverse the district election commission's decision.

2.11 On 24 November 2005, the author appealed the election results to the Court of Appeal. On 26 November 2005 the Court rejected that complaint, on the grounds that the author had failed to provide sufficient evidence to support his claim about the illegality of the invalidation of the voting results by the district election commission. On 29 November 2005, the author filed a cassation appeal to the Supreme Court. He claimed that the Court of Appeal had unlawfully shifted onto him the burden of proving the absence of irregularities during the election process, instead of requiring the electoral authorities to substantiate the invalidation decision. On 30 November 2005, the Supreme Court rejected the author's cassation appeal.

2.12 On 30 September 2005, the author submitted another complaint to the European Court of Human Rights.[2] It concerned the refusal to grant him immunity from arrest, which he claimed was discriminatory as compared with other candidates; the refusal to substitute the detention order with release on bail; the political nature of the criminal proceedings against him and the length of the criminal proceedings; the allegedly arbitrary decision to invalidate the election results in five polling stations; and the refusal to issue him with an identity card and a diplomatic passport. On 28 May 2009, the Court found the author's claims concerning his identity documents inadmissible. The Court requested observations from the State party on the rest of the claims. In a letter dated 12 January 2010, the State party unilaterally recognized that the proceedings before the domestic courts with regard to the author's election-related complaints had not complied with the requirement of fairness, and offered the amount of €7,200 as compensation. On 3 February 2010, the author requested the Court to reject the State's declaration on the grounds that the terms of the agreement had been "unsatisfactory", as the aim of his complaint had been to confirm his victory in the election and guarantee him membership of Parliament. On 4 October 2011,

[2] Application No. 35559/05.

the Court considered the proposed amount to be reasonable and decided to strike that part of the author's application out of its list of cases. The Court declared the author's remaining claims inadmissible.

The complaint

3.1 Without specifically invoking particular provisions of the Covenant, the author claims that the detention order against him of 10 October 2000 was unlawful and that the criminal proceedings against him were politically motivated. He similarly alleges that the refusal of the courts to substitute the detention with house arrest or bail, as well as the lifting of the immunity during the parliamentary elections, were unlawful.

3.2 The author claims to have been discriminated against on the basis of his political opinions and his criticism of the ruling party. He was prevented from freely exercising his political and civil rights in his country, from participating in the elections and from conducting electoral campaigns under the same conditions as other candidates.

3.3 The author alleges that he was unlawfully deprived of his rights to vote and to be elected in both the presidential elections of 2003 and the parliamentary elections of 2005, in violation of article 25 of the Covenant. Even though he was living in the United States as a refugee at the time, he had neither the nationality of that country nor any debts or obligations there, and the refusal to register him as a candidate was politically motivated. As regards the parliamentary elections, he claims that the State party prevented him from taking up the post in Parliament for which he had indeed been elected, by invalidating the election results in five polling stations. He alleges that the enforceable detention order against him prevented him from conducting a proper election campaign in Azerbaijan. He also claims that the refusal to issue him with an identity card and a diplomatic passport unreasonably restricted his rights to vote and to participate in the elections because a national identity document is required in order to vote and to stand as a candidate in elections.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 25 July 2014, the State party challenged the admissibility of the communication under articles 1 and 5 (2) (b) of the Optional Protocol.

4.2 The State party submitted that it had acceded to the Optional Protocol on 27 November 2001, therefore part of the author's complaints under articles 9 and 25 of the Covenant concerning events that took place before that date should be rejected *ratione temporis*.

4.3 The State party also noted that since the European Court of Human Rights had already dealt with all of the author's claims raised before the Committee, on 27 May 2004, 28 May 2009 and 4 October 2011, the communication should be declared inadmissible.

4.4 The State party presented observations on the merits, referring to the European Court of Human Rights decisions in the author's cases. Regarding the alleged violation of article 9 of the Covenant (article 5 of the European Convention on Human Rights), the European Court of Human Rights found that since the author had not actually been deprived of his liberty, that provision was not applicable to him. Similarly, the Court found inadmissible the author's claims concerning the unlawfulness of the refusal to grant him immunity during the parliamentary elections and the refusal of the courts to replace the decision to have him placed on detention on remand with house arrest.

4.5 As for the alleged violation of article 14 of the Covenant, the State party notes that the European Court of Human Rights considered that the author's claims concerned detention on remand at an early stage of the criminal proceedings, and not a "trial" before a "tribunal". The Court found that the author could not claim to be a victim under article 6 of the European Convention on Human Rights while the criminal proceedings against him were still pending. The Court has also examined the author's claim about the unfairness of the proceedings concerning the refusal to issue the author with an identity card and a new diplomatic passport. The Court found that this claim did not relate to a "civil" right and therefore was incompatible with the provisions of article 6 of the Convention.

4.6 As to the author's allegations that his rights under article 25 of the Covenant have been violated, the State party refers to its unilateral declaration to the European Court of Human Rights in which it acknowledged that the proceedings before the domestic courts with regard to the author's election-related complaints had not complied with the requirement of fairness. The State party had offered compensation of €7,200 to the author and, as a result, the European Court of Human Rights had struck the relevant part of the author's claim out of its list of cases.

4.7 The State party also submits that the author has not substantiated his claims under articles 19 and 21 of the Covenant, and that these should be rejected as manifestly unfounded

4.8 Finally, the State party adds that because the author's claims are inadmissible, article 2 of the Covenant, which applies only when an individual has an arguable claim of a violation of his or her Covenant rights, is inapplicable in the author's case.

Author's comments on the State party's observations

5.1 On 2 September 2014, the author provided comments on the State party's observations. Regarding the State party's argument that some claims are inadmissible *ratione temporis*, the author responds that the State party should not be immune for its violations simply because they occurred prior to the entry into force of the Optional Protocol. He claims that the State party continues to maintain "falsified" charges against him and that the violation continues. He claims to have been detained in connection with the 2010 detention order in the Netherlands, Norway and Ukraine.

5.2 The author claims that even though he is not in Azerbaijan, his communication is admissible. He should not be required to subject himself to the full extent of persecution and human rights violations in order for the Committee to consider his claims. By virtue of filing false charges against him, the State party has already violated, and continues to violate, the Covenant.

5.3 The author repeats his unwillingness to accept the State party's offer of monetary compensation in respect of the irregularities during the parliamentary elections of 2005. He invites the Committee to determine an appropriate remedy based on the State party's violation of article 25 of the Covenant.

5.4 The author asks the Committee to request the State party to lift the charges against him, investigate the violation of his rights and pay monetary compensation, and to "recommend further appropriate actions" to the State party.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes the State party's observation that all claims raised by the author before the Committee have been considered by the European Court of Human Rights, on three occasions, in 2004, 2009 and 2011. However, the Committee notes that when acceding to the Optional Protocol, the State party did not make a reservation concerning inadmissibility of communications which have been examined under another procedure of international investigation or settlement. Since the matters raised in the present communication are not currently being examined under another procedure of international investigation or settlement, the Committee is not precluded under article 5 (2) (a) of the Optional Protocol from considering the author's complaint.

6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. In the absence of objections by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the author's claim that article 2 of the Covenant has been violated, and notes in this regard that the author has neither indicated how, in practice, this article was violated, nor in conjunction with which other articles he claims a violation of article 2. The Committee recalls its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties[3] and a violation of article 2 can be invoked by individuals only in conjunction with other substantive provisions of the Covenant.[4] In the absence of any further relevant information or explanations on file, the Committee finds this part of the complaint unsubstantiated and inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes the State party's argument that the author's claim under article 9 of the Covenant regarding the detention order of 10 October 2000 concerns events that took place before the entry into force of the Optional Protocol for the State party, and that it should be considered inadmissible *ratione temporis*. The Committee also notes the author's counterargument that the detention order against him remains in force and that, accordingly, the violation of his rights continues.

6.6 In this connection, the Committee recalls its jurisprudence to the effect that alleged violations of the Covenant that occurred before the entry into force of the Optional Protocol for the State party in question may only be examined by the Committee if those violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant.[5] The Committee observes that, in the present case, the detention order issued against the author on 10 October 2000 remains in force. It also notes that the author was detained in connection with the order in question, and with the aim of extradition in 2005 in Ukraine.[6] Accordingly, the Committee finds that the detention order continued to have an effect on the author's rights after the Covenant entered into force for the State party. Thus, the Committee considers that it is not precluded *ratione temporis* from considering that part of the communication.

6.7 The Committee notes that the author's claims regarding the detention order of 10 October 2000, the refusal of Sabail District Court on 5 July 2002 to replace the author's detention on remand with house arrest, the same Court's refusal of bail on 14 October 2005, and the decision of the Prosecutor General on 27 August 2005 confirming the validity of the detention order and the inapplicability of the election candidates' immunity in the author's case, fall under article 9 of the Covenant. The Committee observes, however, that despite a valid detention order dated 10 October 2000 against him, the author, who has resided since 1996 in the United States, has never been detained by the State party and deprived of liberty in the sense of article 9 of the Covenant.[7] Since the subsequent decisions are directly linked to the initial detention order of 10 October 2000, the Committee finds that, in the present case, the author's claims relating to the detention order fall outside the scope of article 9 of the Covenant and are thus inadmissible under article 3 of the Optional Protocol.

6.8 The Committee notes that the author does not explain how his rights under article 14 of the Covenant have been violated, apart from claiming that the criminal proceedings against him were politically motivated. The Committee notes, however, that the criminal investigation against the author was suspended because he had left Azerbaijan, and, as a result, there have been no criminal proceedings against him. In these circumstances, the Committee finds that the author's complaint under article 14 of the Covenant is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

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[3] See *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 8.4; *Rodriguez Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; and *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

[4] See, for example, *Anderson v. Australia* (CCPR/C/88/D/1367/2005), para. 7.6.

[5] See *Kouidis v. Greece* (CCPR/C/86/D/1070/2002), para. 6.3; and *Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010), para. 8.3.

[6] In this connection, it should be noted that, from the material on file, the author has not specified the dates of his detentions in the Netherlands or in Norway.

[7] See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 5. See also *Dassum and Dassum v. Ecuador* (CCPR/C/116/D/2244/2013), para. 6.5.

6.9 The Committee observes that the author has not indicated how his rights under articles 19 and 21 of the Covenant have been violated in practice. It notes that the mere allegation that the criminal proceedings and the detention order against him constituted a form of retaliation against him for the criticism he expressed against the ruling party is not sufficient, in and of itself, to substantiate these claims for the purposes of admissibility. In the absence of more detailed information on file, the Committee finds this part of complaint inadmissible under article 2 of the Optional Protocol.

6.10 The Committee also notes that the author's claim under article 25 of the Covenant concerning the refusal of the Central Election Commission to register him as a candidate in the 2003 presidential elections was found inadmissible by the European Court of Human Rights, on 27 May 2004. The present communication was submitted to the Committee on 21 January 2013, that is, nine years after the decision of the European Court of Human Rights. The Committee notes that under rule 96 (c) of its rules of procedure, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.[8] In the absence of an explanation from the author in this connection, the Committee considers that submitting a claim after such a considerable time lapse without justification should be regarded as an abuse of the right of submission, and finds this part of the complaint inadmissible under article 3 of the Optional Protocol and under rule 96 (c) of the Committee's rules of procedure.

6.11 The Committee notes the author's claim that the Prosecutor General's decision of 27 August 2005 "annulled" the immunity provided to other election candidates and prevented him from returning to Azerbaijan to carry out an electoral campaign, in violation of article 25 of the Covenant. The Committee notes, in this regard, that according to articles 70 (1) and (4) of the Election Code, the immunity of election candidates from criminal prosecution and arrest covers only the period from the date of registration as a candidate to the date of publication of the election results. In applying those legal provisions, when considering the author's complaint, the domestic courts arrived at the conclusion that the author was not eligible for immunity as a candidate in the 2005 parliamentary elections because the detention order of 10 October 2000 against him concerned charges for criminal offences committed in 1990–1995. The Committee observes that, while the detention order in force might have restricted the author's rights under article 25 (b) of the Covenant, such restriction was based on the application of the national law in regard to the criminal charges brought against the author in 1998. While noting the author's argument that the Prosecutor General ordered the execution of the detention order issued in 2000 immediately after the registration of the author as a candidate, the Committee does not have at its disposal sufficient evidence to allow it to conclude that the decision of the Prosecutor General of 27 August 2005 and the subsequent court decisions were arbitrary or amounted to an unreasonable restriction under article 25 (b) of the Covenant. The Committee therefore finds the author's claims under article 25 of the Covenant unsubstantiated and inadmissible under article 2 of the Optional Protocol.

6.12 The Committee notes the author's claim that the refusal by the domestic authorities to issue him with a national identity card and a new-format diplomatic passport restricted his rights under article 25 of the Covenant, since in order to vote and to participate in the elections he needed to present such documents. The Committee notes, however, that despite these alleged obstacles, the author has been registered as a candidate and has run for a seat in Parliament. It is thus unclear how, in such circumstances, his present claim falls under article 25 of the Covenant. In the absence of any further relevant information in this connection, the Committee finds this part of the author's complaint insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.13 The Committee notes the author's allegations that the State party violated his rights under article 25 of the Covenant as the district election commission cancelled the results in

[8] See CCPR/C/3/Rev.10.

five polling stations where the majority of the votes were cast for him, which led to the author losing the election. The Committee observes that the domestic courts dismissed the author's complaints as lacking substantiation and did not examine the substance of his claim that the decision of the district election commission was unlawful. In this regard, the Committee also notes the State party's observation that on 12 January 2010, the State party acknowledged before the European Court of Human Rights that "the proceedings before the domestic courts with regard to the applicant's election-related complaints did not comply with the requirement of fairness" and that compensation equal to €7,200 had been offered to the author. The Committee takes into account the author's refusal to accept the settlement offered by the State party and his claim that he was not seeking monetary compensation but a seat in Parliament, to which he had been elected. The Committee notes that the file does not contain the decision of the district election commission dated 7 November 2005 or the relevant decisions of the Central Election Commission, and that the decisions of the domestic courts do not analyse the substance of the author's claim. The Committee thus finds this part of the author's claim under article 25 of the Covenant insufficiently substantiated, for the purpose of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

6.14 Finally, the Committee notes the author's claim under article 26 of the Covenant that he was discriminated against in the 2005 parliamentary elections, as compared with other candidates, because he could not carry out an election campaign in person, having been prevented from entering the country because of politically motivated persecution — through the detention order issued against him and by his unlawful exclusion from the immunity granted to election candidates. The Committee notes that, in view of the above findings of inadmissibility regarding the author's remaining claims, the claim under article 26 of the Covenant is unsubstantiated and inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol and under rule 96 (c) of the Committee's rules of procedure;

(b) That the present decision shall be transmitted to the State party and to the author.